BUKIT PUNCHOR DEVELOPMENT SDN BHD

v.

YOMART ENVIRONMENTAL SYSTEM (M) SDN BHD

HIGH COURT MALAYA, PENANG
RK NATHAN J
[COMPANIES WINDING-UP NO: 28-53-2000]
9 JANUARY 2002

CIVIL PROCEDURE: *Costs - Taxation of bill of costs - Application to registrar for review - Whether filed within time - Rules of the High Court 1980, O. 59 r. 34, O. 3 r. 2(2) & (3)*

The petitioner filed an application in encl. 20 for a review of the taxation of the bill of costs ('the order') by the senior assistant registrar ('SAR') in a winding-up petition. The respondent raised a preliminary objection that encl. 20 filed on 13 February 2001 was out of time. That was because the 14-day period envisaged under O. 59 r. 34 of the Rules of the High Court 1980 ('RHC') expired on 12 February 2001, the SAR having taxed the bill of costs on 30 January 2001. The SAR upheld the preliminary objection and dismissed encl. 20 with costs. Hence, this appeal.

The appellant relied on O. 3 r. 2(2) of the Rules of the High Court 1980 ('RHC') to argue that encl. 20 was filed within the 14-day period whilst the respondent relied on O. 3 r. 2(3) RHC to argue that encl. 20 was filed out of time.

Held:

[1] The clear distinction between O. 3 r. 2(2) RHC and O. 3 r. 2(3) RHC rests with the word 'after' in O. 3 r. 2(2) RHC. When O. 59 r. 34(2) RHC is read with O. 3 r. 2(2) RHC an application for review can be done at any time within the 14 days, which starts running the day after the order is made. Since the order was made on 30 January 2001, the 14 days would start running from 31 January 2001. The 14th day would then be 13 February 2001. The appellant was therefore within time when it filed encl. 20 on 13 February 2001. (p 79 f)

[2] Order 59 r. 34(2) RHC can only be read with O. 3 r. 2(2) RHC and not O. 3 r. 2(3) RHC. The period specified in O. 3 r. 2(3) RHC does not allow for the 14 days to commence after the date of the order being made. The words used are that the act, *ie*, as in the present case the filing of the application for review must be done within or not less

than the 14 days provided. But the rule relating to review states that the 14-day period should commence at any time within 14 days after the decision is made. Clearly O. 59 r. 34(2) RHC is meant to attract O. 3 r. 2(2) RHC and not O. 3 r. 2(3) RHC. (p 79 h-i & 80 a)

[Appeal allowed; order of SAR dismissing review set aside.]

Legislation referred to:
Rules of the High Court 1980, O. 3 r. 2(1), (2), (3), O. 59 r. 34(1), (2)

For the petitioner - Jannu Babjan; M/s Lim Cheng Poh, Lim & Rahim
For the respondent - Jagjit Singh; M/s JJ Singh & Assoc

Reported by Usha Thiagarajah

JUDGMENT

RK Nathan J:

The senior assistant registrar (SAR) assessed costs in a winding-up petition and fixed the sum at RM33,333.33. Dissatisfied with the sum awarded the petitioner sought a review before the SAR. The respondent then raised a preliminary objection at the review stage contending that the application for review (encl. 20) was filed out of time. The learned SAR upheld the preliminary objection and dismissed encl. 20 with costs. Hence this appeal before me.

Findings Of The Court

Enclosure 20 was filed on 13 February 2001. Order 59 r. 34 of the Rules of the High Court 1980 (the RHC) deals with reviewing the bill of costs. The relevant rules for this case are 34(1) & (2) which read as follows:

> (1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by the Registrar, or with the amount allowed by the Registrar in respect of any item, may apply to the Registrar to review his decision in respect of that item.
>
> (2) An application under this rule for review of the Registrar's decision may be made at any time within 14 days after that decision or such shorter period as may be fixed by the Registrar.

It is agreed by both parties that the plaintiff filed encl. 20 on the 14th day, the SAR having taxed the bill on 30 January 2001. Counsel for the appellant contends that since the review was filed on the 14th day that clearly fell within the provision of "within 14 days" as stated in sub-r. (1). Counsel for the respondent however argued that the 14-day period expired

on 12 February 2001. What both their submissions amounted to was that the appellant relied on O. 3 r. 2(2) of the RHC whereas the respondent relied on O. 3 r. 2(3) of the RHC.

For ease of reference, it is necessary to reproduce O. 3 r. (1), (2) and (3) which read as follows:

> 1. Without prejudice to the Interpretation Act 1967, in its application to these rules, the word "month", where it occurs in any judgment order, direction or other document forming part of any proceedings in the High Court, means a calendar month unless the context otherwise requires.
>
> 2. (1) Any period of time fixed by these rules or by any judgment, order or direction for doing any act shall be reckoned in accordance with the following provisions of this rule.
>
> (2) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.
>
> (3) Where the act is required to be done within or not less than a specified period before a specified date, the period ends immediately before that date.
>
> (4) –
>
> (5) –
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> 3. Unless the Court otherwise directs, the period of the Court Vacation shall be excluded in reckoning any period prescribed by these rules or by any order or direction for serving, filing or amending any pleading.

To my mind, the clear distinction rests with the word 'after' as stated in O. 3 r. 2(2). Reading O. 59 r. 34(2) with O. 3 r. 2(2) means that where, as in this case, an application for a review is to be made, it can be done at any time within the 14 days and which 14 days is to start running the day after the order is made and since the order namely the taxation of the Bill of Costs was done on 30 January 2001 the 14 days would start running from 31 January 2001 and therefore the 14th day would be 13 February 2001. The appellant is therefore within time to have filed encl. 20. Clearly the respondent has confused itself with the effect of O. 3 r. 2(3). The respondent had failed to read O. 3 r. 2(3) with the effect of O. 59 r. 34(2). If it had done so it would have noted that O. 59 r. 34(2) can only be read with O. 3 r. 2(2) and not O. 3 r. 2(3) of the RHC. The period specified in O. 3 r. 2(3) does not allow for the 14 days to commence after the date of the order being made. The words used are that the act ie, as in this case, the filing of the application for review, must be done within or not less than the 14 days provided. But the rule specifically relating to review

says that the 14-day period should commence at any time within 14 days after the decision is made. Clearly O. 59 r. 34(2) is meant to attract to itself O. 3 r. 2(2) to be read together and not O. 3 r. 2(3) of the RHC. The appeal is allowed with costs and the order of the learned SAR dismissing the review on the preliminary objection that the review was filed out of time is set aside.